

Dale J. Fr.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on the date identified below.

By: THOMAS M. GALGANO

Date: July 24, 2008

PATENT
DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : JULY 16, 1999
TITLE : CAR AND TRUCK BEVERAGE HOLDER
EXAMINER : NASCHICA S. MORRISON
ART UNIT NO. : 3632

RENEWED PETITION PURSUANT TO 37 C.F.R. §1.137(b)

Mail Stop Petition
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Renewed Petition pursuant to 37 C.F.R. §1.137(b) is in response to the Decision on Petition Pursuant to 37 C.F.R. §1.137(b) dated March 24, 2008 denying Applicant's Petition To Revive the above-identified application, as a result of unintentional delay.

07/29/2008 SSANDARA 00000021 09356771

01 FC:2252 230.00 OP

In the Decision on Petition pursuant to 37 C.F.R. §1.137(b), it stated that Petitioner had included the proper statement of unintentional delay. However, it was noted that this application had been abandoned for an extended period of time and that Petitioner did not submit a sufficient statement of facts that would establish "unintentional" delay with respect to three specific periods:

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing the initial petition to either have the holding of abandonment withdrawn or to revive the application; and
- (3) the delay in filing a grantable petition to revive the application.

In response, Applicant respectfully submits that the entire delay in filing a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. As set forth in the attached Declarations In Support Of Renewed Petition Pursuant to 37 C.F.R. §1.137(b) of Thomas M. Galgano, the attorney of record for Applicant and Joseph E. Porcelli, the Applicant, the actions of Applicant and his attorney are inconsistent with an intent to abandon the above-identified application and the abandonment was unintentional. On this basis, Applicant requests that this Renewed Petition be granted.

1. **PERIOD 1**

DELAY IN REPLY THAT ORIGINALLY RESULTED IN THE ABANDONMENT

Initially, there appears to be a mistake in the Decision at page 4, last sentence, of the second paragraph which requires that Applicant explain why a response to the "non-final" rejection was not provided in a timely manner. As noted above and in the attached declarations, the response was to a "final" rejection.

As seen in the attached Declaration of Applicant's attorney, Thomas M. Galgano, Esq.¹ a timely "reply" was submitted to the final Office Action dated March 4, 2004, 2007 in the form of a "continuation" application that was filed on September 7, 2004. The six month deadline for replying to the aforesaid final Office Action fell on Saturday, September 4, 2004 and Monday, September 6, 2004 was a federal holiday. Therefore, Applicant timely filed a reply on Tuesday, September 7, 2004 (TG ¶2, Exh. A).

Applicant's attorney had intended to file a Request for Continued Examination (RCE), but mistakenly filed a transmittal form for a continuation application. This "reply" was timely filed with a Request for three (3) month extension of time and fee payment and a Preliminary Amendment, consistent with filing an RCE. Applicant did not intend to file a continuation application as evidenced by the fact that no specification, claims or drawings were filed. Thus, the only error was in the transmittal form and not the submission papers themselves which were timely filed and appropriate for an RCE.

Therefore, Applicant did not intentionally abandon the application as Applicants' attorney intended to file an RCE and timely submitted a "reply" to the Final Office Action.

¹ Hereinafter the Declaration of Thomas M. Galgano will be referred to as "TG" followed by the pertinent paragraph "¶" number.

2. **PERIOD 2**

**DELAY IN FILING INITIAL PETITION TO EITHER HAVE THE HOLDING
OF ABANDONMENT WITHDRAWN OR TO REVIVE THE APPLICATION**

As indicated above, Applicant's attorney mistakenly filed the incorrect transmittal form, intending to file a RCE but instead filing a continuation application (TG ¶2, Exh. A). Applicant then received a postcard receipt from the USPTO indicating that the continuation application had been received on September 7, 2004 and assigned Serial No. 10/935,503 (TG ¶3, Exh. B).

On October 20, 2004, Applicant's Attorney received a Notice of Abandonment with respect to the above-identified "parent" application, Serial No. 09/356,771 (TG ¶4, Exh. B). However, at that time, it was not apparent that the "continuation" application (Serial No. 10/935,503) was affected by this Notice of Abandonment, since the Notice of Abandonment referred to the "parent" application and not the "continuation" application which had been assigned a new serial number (TG ¶3, Exh. B).

On July 12, 2005, Applicant's attorney received a telephone call from Ms. Steel of the USPTO indicating that the application was improperly entered as an amendment and that the USPTO had to correct it. It was pointed out to her that there was a final Office Action and Applicant filed a continuation with a three month extension of time which was mentioned in the transmittal papers and in the Preliminary Amendment.

As a result, Ms. Steel indicated that on this basis she would try to expedite the handling of this case and passed it through to the tech department for processing (TG ¶5, Exh. D).

Subsequently, Applicant received a Notice of Corrected Application papers on July 13, 2005 indicating that the above-identified continuation application was incorrectly assigned a serial number which had been vacated and indicating that a "new filing receipt" for the original application Serial No. 09/356,771 would be mailed in due course (TG ¶6, Exh. E).

At this point, Applicant's attorney was of the belief that the matter was going to be corrected by the USPTO (TG ¶6). However, the case was inadvertently not docketed for a status call-up and it was not realized that no new filing receipt had yet issued until a review of the file on or about October, 2006 (TG ¶7).

Upon discovering that Applicant had not yet received the amended filing receipt from the USPTO, Applicant's attorney immediately had his secretary, Mrs. Pat Neff (since retired), make numerous telephone calls to the USPTO to check the status of the application. As indicated in her handwritten memos to the file (TG ¶8-10, Exh. F), Mrs. Neff called on October 3, 2006, and spoke to Mrs. Holmes (nee Steel) of the USPTO who had previously called me to let me know that the USPTO would expedite the processing of the application (TG ¶8, Exh. D). Mrs. Holmes indicated that she would review the file and call back. Mrs. Neff again called the USPTO on October 31, 2006, to follow-up and she left a message for Mrs. Holmes. On the same day, Mrs.

Neff heard back from Mrs. Holmes who indicated that she would contact the examiner handling the application to indicate to her that "all correct paperwork was sent in" and that "they had originally given us an incorrect serial number".

As a follow-up, Mrs. Neff made several telephone calls to the USPTO on December 12, 2006, January 4, 2007, and January 11, 2007, to check the status of the case (TG ¶10, Exh. F) and it was only at this time that Applicant's attorney was informed by the Supervisory Examiner Carl Friedman that the USPTO changed its previous indication that the original submission was sufficient for filing purposes and now indicated that the case went abandoned due to the failure to use a proper transmittal form and that it would be necessary to file a Petition to Revive (Exh F., last memo).

In response, Applicant filed the first Petition to Revive under §1.137(a) for unavoidable delay on March 5, 2007 and a decision was received on August 4, 2007 denying the Petition (TG ¶11 and ¶12). Applicant's attorney then filed a Petition under §1.137(b) for unintentional delay on October 22, 2007 and a response dismissing the petition was mailed March 24, 2008 (TG ¶ 13 and ¶14).

During this period, the delay in filing the Petition to Revive was not because Applicant intentionally sought to abandon the application, but rather Applicant was under the impression from speaking to USPTO personnel that the Notice of Abandonment did not pertain to the "RCE/Continuation" application and that the USPTO would correct the mistake that resulted from the improper transmittal form (TG

¶15). It was only after numerous other inquiries to the USPTO and upon speaking to Supervisory Examiner Friedman on January 11, 2007 that Applicant's attorney was made aware of the USPTO change of position in regard to the necessity of filing a Petition to Revive and, as a result, Applicant promptly filed its first Petition to Revive.

Therefore, Applicant respectfully submits that the entire delay during this period was unintentional.

3. **PERIOD 3**

DELAY IN FILING A GRANTABLE PETITION TO REVIVE THE APPLICATION

Upon being informed by Supervisory Examiner Friedman on January 11, 2007 that it would be necessary to file a Petition to Revive the application (TG ¶10, Exh. F) Applicant's attorney promptly filed a petition to revive under §1.137(a) for unavoidable delay on March 5, 2007 with a supporting Declaration of Applicant's attorney. Applicant's attorney believed the facts of the case warranted approval and could satisfy this more stringent burden. However, after the petition was denied on August 24, 2007 (TG ¶12) and in which it was suggested that Applicant file a petition under §1.137(b) for unintentional delay, Applicant promptly did so on October 22, 2007 (TG ¶13) which was denied on March 24, 2008 (TG ¶14).

Therefore, it is respectfully submitted that any delay in filing a grantable petition was unintentional.

CONCLUSION AND SUMMARY

Applicant's actions do not indicate a deliberate course of action to allow the application to be abandoned. On the contrary, the facts of this case as set forth in the attached declarations of Applicant and his attorney is inconsistent with a deliberate course of action to allow abandonment. This is not the situation as in *In re Application of G*, 11 U.S.P.Q. 2d 1378 (Comm'r Pat. 1989) where the Applicant abandoned the application because of a deliberate decision based on the patentability of the claims. That case found that Applicant deliberately chose not to file a response to the Office Action and thereby deliberately allowed the application to become abandoned and denied the petition to revive under 37 C.F.R. §1.137(b).

In contrast, here Applicant filed a timely response to the March 4, 2004 Office Action by seeking to file an RCE with a preliminary amendment, three month extension of time, and fee but inadvertently filed the wrong transmittal form. There was no deliberate action taken by Applicant or his attorney to abandon the Application.

Pursuant to MPEP §711.03(c) petitions under 37 C.F.R. §1.137(b) are less burdensome than petitions under §1.137(a). Even if the Office requires further information in a petition under 37 C.F.R. §1.137(b), the petition itself is still significantly less burdensome to prepare and prosecute than under 37 C.F.R. §1.137(a). Additionally, MPEP §711.03(c) indicates that the Office is almost always satisfied as to whether "the entire delay...was unintentional" on the basis of statement

by the representative explaining the cause of the delay and accompanied by correspondences from the relevant time period.

Applicant respectfully submits that the additional information and documentation submitted herewith clearly establishes that there was no intention to abandon the application and that during all 3 periods the delay was unintentional.

Finally, Applicant hereby requests a two month extension of time in which to respond to the Decision on Petition. Credit Card payment form no. PTO-2038 in the amount of \$230.00 is enclosed to cover the official fee. Any fee deficiency or overpayment may be charged or credited to Deposit Account No.50-3990.

Accordingly, in view of the foregoing, Applicant respectfully requests that its Renewed Petition under §1.137(b) to revive the application be granted.

Respectfully submitted,

JOSEPH E. PORCELLI



Thomas M. Galgano (27,638)
GALGANO & ASSOCIATES, PLLC
Attorneys for Applicant
20 West Park Avenue, Suite 204
Long Beach, New York 11561
Telephone: 516.431.1177

TMG/jgb/jgg

Enclosures: Declaration of Thomas M. Galgano (w/Exhibits A-F)
Declaration of Joseph E. Porcelli
USPTO Form 2038 in the amount of \$230
Postcard

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PATENT
DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : JULY 16, 1999
TITLE : CAR AND TRUCK BEVERAGE HOLDER

DECLARATION OF THOMAS M. GALGANO IN SUPPORT OF
RENEWED PETITION PURSUANT TO 37 C.F.R. §1.137(b)

I, Thomas M. Galgano, do hereby declare:

1. I am the attorney of record in connection with the above-identified application and I submit this Declaration in support of the Renewed Petition Pursuant to 37 C.F.R. §1.137(b).

2. The invention covered by the above-identified application was originally the subject of U.S. Patent Application Serial No. 09/956,771, which was filed on July 16, 1999. That application was finally rejected on July 20, 2001, and, in response, on behalf of Applicant, I filed a continued prosecution application (CPA) on January 22, 2002. A final Office Action in the CPA application issued on March 4, 2004. On September 7, 2004, I submitted a continuation application together with a Preliminary

Amendment and the fee for a three month extension of time (copy attached hereto as Exhibit A). This response was timely submitted to the USPTO as the six (6) month deadline from the Office Action mailed March 4, 2004 was September 4, 2004 which fell on a Saturday and the Monday thereafter, September 6, 2004 was a federal holiday. Therefore, a reply was timely filed on September 7, 2004.

3. I subsequently received a postcard receipt from the U.S. Patent and Trademark Office indicating that the application had been received on September 7, 2004 and assigned Serial No. 10/935,503 (copy attached hereto as Exhibit B).

4. On October 20, 2004, I received a Notice of Abandonment in regard to the original parent application (copy attached hereto as Exh. C). However, at that time, it was not apparent to me that the continuation application was affected by this notice of abandonment since the notice of abandonment referred to the parent application and the continuation application had been assigned a new serial number.

5. On July 12, 2005, I received a telephone call from Shirley Steel of the U.S. Patent and Trademark Office regarding the continuation transmittal form that we filed. She indicated that it was improperly entered as an amendment and she needed to correct it. I pointed out to her that there was a Final Office Action and we filed a continuation with a three month extension of time which was mentioned in the transmittal papers and in the Preliminary Amendment. She indicated that on this basis, she would try to expedite the handling of this case and pass it through to the Tech Department for processing (copy of memorandum to file attached hereto as Exh. D).

6. I subsequently received in the mail a Notice of Corrected Application Number dated July 13, 2005 indicating that the above-identified application Serial No. 09/356,771 was incorrectly assigned Serial No. 10/935,503 and that it had been vacated (copy attached hereto as Exhibit E). The Notice further indicated that a new filing receipt would be mailed in due course. On that basis, I assumed that the matter would soon be corrected.

7. I inadvertently did not docket the case for another status call-up and upon reviewing the file on or about October 3, 2006 I discovered that no new filing receipt had yet issued by the USPTO.

8. On or about October 3, 2006, my former secretary, Pat Neff, called Mrs. S. Holmes (formerly Shirley Steele) to determine the status of the new filing receipt. She indicated she would go through the file and call back (see handwritten notes/memorandum to file of Pat Neff attached hereto as Exh. F).

9. I subsequently had Mrs. Neff conduct status inquiries into this application and on October 31, 2006, she was informed by Mrs. Holmes (nee Steele) that she would e-mail Examiner Shamika Sanders Morrison at Art Unit 3632 and tell her that all correct papers were sent in and that they had originally given us an incorrect serial number (see memorandum to file as Exh. F).

10. On December 12, 2006, January 4, 2007 and January 11, 2007, Mrs. Neff made further inquiries into this application. Having not heard back from Mrs. Holmes (nee Steele), I instructed Mrs. Neff to call Examiner Sanders with whom she

left a message (Exh. F). Having not received a reply, I instructed her to call Supervisory Examiner Carl Friedman on January 4, 2007. On January 11, 2007, I spoke to Supervisory Examiner Carl Friedman at which time I explained the situation and he indicated he would review it and get back to me (Ex. F). I was subsequently informed by Supervisory Examiner Friedman that the application was being treated as abandoned and I would have to file a Petition to Revive

11. On March 5, 2007, I filed a Petition to Revive for unavoidable delay under 37 C.F.R. §1.137(a).

12. On August 24, 2007, I received the decision on Petition under 37 C.F.R. §1.137(a) in which the Petition was denied and in which it was suggested that petitioner consider filing a Petition Under 37 C.F.R. §1.137(b).

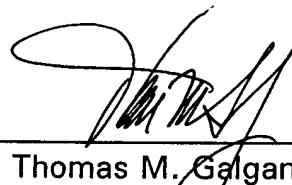
13. On October 22, 2007, I filed a Petition under 37 C.F.R. §1.137(b) for unintentional delay.

14. On March 24, 2008, I received the Decision on Petition Pursuant to §1.137(b) dismissing the Petition.

15. There never was any intention to abandon the above-identified application and it is believed that the entire delay in filing the required reply from the due date until the filing of a grantable petition under 37 C.F.R. §1.137(b) was unintentional. Furthermore, under the above circumstances, it would appear that although there was a mistake with respect to the transmittal form used with filing the RCE application, Applicant's attorney was subsequently informed by the USPTO that the papers were

sufficient for filing purposes and it was not until more recently was it learned that the PTO had subsequently reached the opposite conclusion.

16. In view of the above, it is believed that Applicant has shown good cause for revival of the application on the basis of unintentional delay and to accord the filing of the RCE application, and such action at an early date is earnestly solicited.



Thomas M. Galgano, Esq.

Enclosures: Exhibits A-F

F:\G&b\1310\2\declaration2tmg.wpd
TMG/jgb/jgg/kdd/lis

EXHIBIT A

Please type a plus sign (+) in this box

→ Approved for use through 10/31/2002 OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

UTILITY PATENT APPLICATION TRANSMITTAL <small>(Only for new nonprovisional application under 37 CFR 1.53(b))</small>	Attorney Docket No.: <i>First Named Inventor:</i> Title: Express Mail Label No.:	1310-2 Joseph E. PORCELLI CAR AND TRUCK BEVERAGE HOLDER EV 235846803 US
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APPLICATION ELEMENTS <small>See MPEP chapter 6000 concerning design patent application contents</small>		ADDRESS TO: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
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<ol style="list-style-type: none"> <input checked="" type="checkbox"/> Fee Transmittal Form (e.g. PTO/SB/17) <i>(submit an original, and a duplicate for fee processing)</i> <input checked="" type="checkbox"/> Applicant claims small entity status <i>See 37 CFR 1.27</i> <input type="checkbox"/> Specification [Total Pages _____] <i>(preferred arrangement set forth below, MPEP 1503.01)</i> <ul style="list-style-type: none"> - Descriptive Title of the Invention - Cross References to Related Applications - Statement Regarding Fed sponsored R&D - Reference to sequence listing, a table, or a computer program listing appendix - Background of the Invention - Brief Summary of the Invention - Brief Description of the Drawings (<i>if filed</i>) - Detailed Description - Claim(s) - Abstract of the Disclosure <input type="checkbox"/> Drawings(s) (37 CFR 1.152) [Total Sheets _____] <input type="checkbox"/> Oath or Declaration [Total Pages _____] <ol style="list-style-type: none"> a. <input type="checkbox"/> Newly executed (original or copy) b. <input type="checkbox"/> Copy from a prior application (37 CFR 1.63(d)) <ol style="list-style-type: none"> a. <input type="checkbox"/> DELETION OF INVENTOR(S) <i>Signed statement attached deleting inventor(s) named in the prior appl., see 37 CFR 1.63(d)(2) and 1.33(b)</i> <input type="checkbox"/> Application Data Sheet. See 37 CFR 1.76 	<ol style="list-style-type: none"> 7. <input type="checkbox"/> CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix) 8. <input type="checkbox"/> Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary) <ol style="list-style-type: none"> a. <input type="checkbox"/> Computer Readable Form (CRF) b. Specification Sequence Listing on <ol style="list-style-type: none"> i. <input type="checkbox"/> CD-ROM or CD-R (2 copies or ii. <input type="checkbox"/> paper c. <input type="checkbox"/> Statements verifying identity of above copies
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ACCOMPANYING APPLICATION PARTS

9. Assignment Papers (cover sheet & document(s))
10. 37 CFR 3.73(b) Statement Power of Attorney (when there is an assignee)
11. English Translation Document (*if applicable*)
12. Information Disclosure Statement (IDS) PTO-1449 Copies of IDS Citations
13. Preliminary Amendment
14. Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
15. Certified Copy of Priority Document(s)
(if foreign priority is claimed)
16. Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. Other: ..PTO-2038 Form for 3-mo EOT (\$475.00)

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

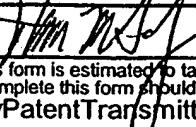
Continuation Divisional Continuation-in-part (CIP) of prior application No. 09/356,771

Prior application information: Examiner: NARSCHICA S. MORRISON Group Art Unit: 3632

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

Customer Number or Bar Code Label *(Insert Customer No. or Attach bar code label here)* or Correspondence address below

Name	Galgano & Burke				
Address	300 Rabro Drive, Suite 35				
City	Hauppauge	State	New York	Zip Code	11788
Country	USA	Telephone	631-582-6161	Fax	631-582-6191
Name (Print/Type) <u>Thomas M. Galgano</u>		Registration No. (Attorney/Agent): <u>27,638</u>			
Signature 		Date: <u>September 7, 2004</u>			

Burden Hour Statement. This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington DC 20231.
F:\G&b\13102\UtilityPatentTransmittal.wpd

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

FEE TRANSMITTAL FOR FY 2003

Effective 01/01/200. Patent fees are subject to annual revision

Applicant claims small entity status.
See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT \$860.00

Application Number:
Filing Date:
First Named Inventor:
Examiner Name:
Group Art Unit:
Attorney Docket No.:

Complete If Known
09/356,771
September 7, 2004
Joseph E. PORCELLI
Narschica S. Morrison
3632
1310-2

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Order Other None

 Deposit Account:

Deposit Account Number: 07-0130

Deposit Account Name: Galgano & Burke

The Commissioner is authorized to: (check all that apply)

- Charge fee(s) indicated below
 Credit any overpayments
 Charge any additional fee(s) during the pendency of this application except for issue fee
 Charge fee(s) indicated below, except for filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity			
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	\$385.00
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1) (\$)		\$385.00			

2. EXTRA CLAIMS FEES FOR UTILITY & REISSUE

Extra Claims	Fee from below	Fee Paid
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Total Claims 4 - 20 ** = 0 x = 0
Independent Claims 2 - 3 ** = 0 x = 0

Multiple Dependent = 0

Large Entity		Small Entity			
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	**Reissue independent claims over original patent	
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2) (\$)		0			

** or number previously paid, if greater;
For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1805	2520	1812	2520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1840*	1805	1840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1480	2254	740	Extension for reply within fourth month	
1255	2010	2255	1005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1510	1451	1510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1330	2453	655	Petition to revive - unintentional	
1501	1330	2501	655	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant Issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection 37 CFR §1.129(a))	
1810	770	2810	385	For each additional invention to be examined 37 CFR §1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

SUBTOTAL (3) (\$) 475.00

*Reduced by Basic Filing Fee Paid

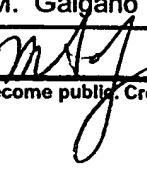
SUBMITTED BY

COMPLETE (if applicable)

Name (Print/Type) Thomas M. Galgano

Registration No. 27,638

Telephone: 631-582-6161

Signature 

Date September 7, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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PATENT

DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : SEPTEMBER 7, 2004
FOR : CAR AND TRUCK BEVERAGE HOLDER
EXAMINER : NARSCHICA S. MORRISON
GROUP : 3632

PRELIMINARY AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Preliminary to the initial Office Action, please amend the above-identified application as follows:

IN THE CLAIMS

Claims 1-17. (Previously Canceled)

Claim 18. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular basket having four side walls, each having a top edge border which collectively define an open top end and which, in turn, defines a rectangular opening, at least two of said side walls disposed opposite one another each having at least two openings therethrough disposed beneath said top edge border thereof; and

at least four resilient fingers coupled to said rectangular basket and extending inwardly toward said rectangular opening, said at least four resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers each being made of a single unitary member cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from one of said top edge borders of said opposite side walls such that they each extend downwardly into a different one of said side wall openings; and

a generally U-shaped hook attached to and extending above said basket, wherein

said rectangular basket, said at least four resilient fingers and said generally U-shaped hook are formed as a single unitary member.

Claim 19. (Previously Canceled)

Claim 20. (Previously Amended) A beverage container holder according to Claim 18, wherein said single unitary member is plastic.

Claim 21. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular tray having a top wall having a pair of spaced-apart rectangular openings; and

at least two sets of four resilient fingers coupled to said rectangular tray and said fingers of each set extending inwardly toward a different one of said rectangular openings, said resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the respective rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers of each set cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from said top wall of said tray[, said rectangular tray and] said [at least two sets of four] resilient fingers are each formed as a single unitary member; and

a supporting member rotatably coupled to said rectangular tray and being pivotable into a position located below said rectangular opening.

Claim 22. (Previously Added) A beverage container holder according to Claim 21, further comprising:

spring means for biasing said supporting member to said position located below said rectangular opening.

Claim 23. (Previously Canceled)

REMARKS

Reconsideration and withdrawal of the final rejection is respectfully requested in view of the foregoing amendments and the following remarks.

Concerning initially the 112 rejection, by this Preliminary Amendment, the recitation in Claim 21 relative to the two sets of four fingers and the rectangular tray being formed of a single unitary member has been deleted. The resilient fingers are each now defined as being formed "as a single unitary member". Claim 18 has been appropriately amended to define each of the four fingers being made of a single unitary member, as well.

In addition, Claims 18 and 21 have been further amended to define the V-shaped fingers as each defining an obtuse angle therebetween, support for which can be seen in Fig. 1. This obtuse angle allows the fingers to be depressed more easily by the cup being inserted into the holder. As will be discussed in greater detail hereinafter, it is respectfully submitted that the prior art neither discloses nor suggests this novel combination of features.

At the outset, Applicant wishes to bring to the Examiner's attention a recent article in Newsday dated May 31, 2004, in which there was reference to the fact that it was difficult to "try jamming one of those square bottles into your car's

cup holder". This merits attention since it goes to the issue of the present invention that current cup holders are not designed to hold both round and square containers. It is respectfully submitted that it is only through hindsight reasoning that the prior art can be constructed in such a fashion as to duplicate Applicant's invention. In any event, the prior art relied upon by the Examiner does not disclose or suggest the invention as now claimed.

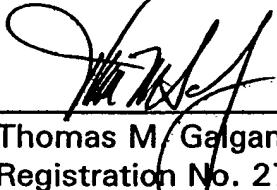
In particular, as noted above, the claims now define the use of V-shaped resilient fingers made of one piece which define an obtuse included angle. On the other hand, the German reference discloses fingerse having an included acute angle. The obtuse angle and the provision of V-shaped fingers in this form allow for a more gradual displacement thereof when the cup is inserted. The use of both the integrally formed resilient fingers, each having a V-shaped profile with an obtuse included angle is neither disclosed nor suggested by the references relied upon by the Examiner either applied alone or in combination.

Finally, Applicant hereby requests a three-month extension of time in which to respond to the outstanding Office Action. Credit Card payment form PTO-2038 in the amount of \$475.00 is enclosed to cover the official filing fee. Any fee deficiency or overpayment may be charged or credited to applicant's Deposit Account No. 07-0130.

Accordingly, reconsideration and withdrawal of the rejection and allowance of the claims at an early date is earnestly solicited.

Respectfully submitted,

JOSEPH E. PORCELLI



Thomas M. Galgano
Registration No. 27,638
GALGANO & BURKE
Attorney for Applicant

Date: 9/7/04
300 Rabro Drive - Suite 135
Hauppauge, NY 11788
Tel: (631) 582-6161
Fax: (631) 582-6191

TMG/kdd
F:\G&b\1310\2\preliminaryamend.wpd

Enclosure: PTO Form 2038

EXHIBIT B

RECEIVED IN MAIL ROOM OF PATENT OFFICE: 17497 U.S. PTO
10/935503

APPLICANT : JOSEPH E. PORCELLI
SERIAL NO. : 09/356,771
FILED : SEPTEMBER 7, 2004
FOR : CAR AND TRUCK BEVERAGE HOLDER
EXAMINER : NARSCHICA S. MORRISON / GROUP: 3632



090704

Papers sent:

Utility Patent Application Transmittal for Cont. Appln. (PTO/SB/05)
with Express Mail Cert. No. EV 235846803 US dated 9/7/04
Fee Transmittal (PTO/SB/17) dated 9/7/04
Preliminary Amendment dated 9/7/04
Credit Card Payment Form PTO-2038 for \$860.00

sent 9/7/2004

dd 9/4/2004(weekend)

Docket: 1310-2

EXHIBIT C



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/356,771	07/16/1999	JOSEPH E. PORCELLI	1310-2	8276

7590 10/20/2004

THOMAS M GALGANO ESQ
GALGANO & BURKE
300 RABRO DRIVE
SUITE 135
HAUPPAUGE, NY 11788

[REDACTED] EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
	3632

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment	Application No.	Applicant(s)
	09/356,771	PORCELLI, JOSEPH E.
	Examiner Naschica S Morrison	Art Unit 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 04 March 2004.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:



ANITA KING
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT D

M E M O R A N D U M

To : File

From : Thomas M. Galgano

Date : July 12, 2005

Re : 1310-2

I received a telephone call today from Shirley Steele of U.S. Patent and Trademark Office (1-703-308-9210 ext. 108) regarding the continuation transmittal form that we filed. She indicated that it had been improperly entered as an Amendment and she needs to correct that. I pointed out to her that there was a final Office Action and we filed a continuation with a three month extension which was mentioned in the transmittal papers and in the preliminary amendment. She indicated that on this basis she would try to expedite the handling of this case and pass it through to the Tech Department for processing.

EXHIBIT E



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/935,503	09/07/2004	JOSEPH E. PORCELLI	1310-2

Correspondence Address:

THOMAS M GALGANO ESQ
GALGANO & BURKE
300 RABRO DRIVE
SUITE 135
HAUPPAUGE NY 11788

07/13/2005

NOTICE OF CORRECTED APPLICATION NUMBER

Through an administrative error, the above identified application number was assigned to your application. The correct application number is [09/356,771]. Please refer to the new application number in all future correspondence to the Office.

All notices mailed in application [10/935,503] have been vacated. A new filing receipt will be mailed for [09/356,771] in due course.

The Office regrets any inconvenience this has caused. Please direct any questions or inquiries to Customer Service at (703) 308-1202.

Delora Willard
Office of Initial Patent Examination

EXHIBIT F

10/31/61 09/356, 771

called Ms Holmes - left message

Ms Holmes called me back

She is very confused. She'll
go through file & call me back

or

10/31/61 called - left message
for Ms Holmes

or

-7-

10/31/06 Spoke to Ms Holmes.

She will e-mail the Examiner
(NASHICA SANDERS MORRISON)

at Unit 3632

& tell her all correct paperwork
was sent in

They originally gave us an
incorrect Serial #.

I'll check in a week to see
if any charges

pm

11/12/06 - called by (Sanders) at
Unit 3632 (1-571-272-3600)
Left message.

11/13/06 -
Carl Freedman - Sup. Examiner
at above address

I left message & asked him to
call back pm

- 1) Filed cont application in error
Should have filed RCE
- 2) PTS handled cont applic as a response to office actions

RCE goes into Parent Case
Examiner will wait to withdraw - Wait to hear from her on Thursday -

January 11, 2007:

Received return call from Carl Friedman - He spoke to Tom and Pat concerning this file. He will review file and try to get back to us within a week or so.

pn



PATENT
DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI

SERIAL NO. : 09/356,771

FILED : JULY 16, 1999

TITLE : CAR AND TRUCK BEVERAGE HOLDER

**DECLARATION OF JOSEPH E. PORCELLI IN SUPPORT OF
RENEWED PETITION PURSUANT TO 37 C.F.R. §1.137(b)**

I, Joseph E. Porcelli, do hereby declare:

1. I am the inventor and applicant of the above-identified application and I submit this Declaration in support of the Renewed Petition Pursuant to 37 C.F.R. §1.137(b).

2. The entire delay in filing the required reply from the due date until the filing of a grantable petition under 37 C.F.R. §1.137(b) was unintentional. The reasons for the delay in filing the petition sooner are set forth in the accompanying declaration of my attorney, Thomas M. Galgano.

3. I have vigorously prosecuted and attempted to obtain allowable claims for my above-identified invention and there never was any intention to abandon my application. The application was unintentionally abandoned as explained in detail in the accompanying declaration of my attorney, Thomas M. Galgano.

4. I have been periodically updated throughout the prosecution of my application by my attorney, and I was specifically informed by letter dated July 20, 2005, from my attorney, of the telephone call from Shirley Steele of the USPTO on the matters referred in Paragraph 5 of Mr. Galgano's declaration.

5. On July 27, 2005, I subsequently received a letter from my attorney with a copy of the Notice of Corrected Application (Exh. E of Galgano declaration) whereby the United States Patent and Trademark Office (USPTO) had assigned Serial No. 09/356,771 to my recently-filed continuation application, as discussed in Paragraph 6 of Mr. Galgano's declaration.

6. I periodically had telephone conversations with Mr. Galgano regarding the status of application and was subsequently informed by Mr. Galgano of the holding of abandonment and the need to file a Petition to Revive. I was subsequently advised by letter dated October 23, 2007 from him of its filing. Thereafter, I was informed of the denial of the petition and the filing of the concurrently-filed renewed petition to seek reinstatement of my application.

7. On the basis of the foregoing, and in the interests of justice, it is hereby requested that my aforesaid application be reinstated.

I further declare that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this document and the application to which it relates.



A handwritten signature in black ink, appearing to read "Joseph E. Porcelli".

Joseph E. Porcelli

F:\G&b\1310\2\declaration.porcelli.wpd
TMG/kdd/lS